Supreme Court, U.S.
FILED

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No.

In The

Supreme Court of the United States

CHRISTOPHER A. RENAHAN,
P.O. Box 332
Cassville, WV 26527-0332
Tel. (304) 288-0477

Petitioner,

versus

ALLEGHENY POWER SYSTEM d/b/a
MONONGAHELA POWER COMPANY,
SPECTRUM MEDICAL SERVICES, INC., and
UNITED STATES COAST GUARD,

Respondents.

On Appeal to the United States Court of Appeals for the

Fourth Circuit

PETITION FOR A WRIT OF CERTIORARI

49pp

Questions Presented For Review

In 1986, the United States Congress declared war on a group of inanimate substances. These leaders of the free world, in whom the safety of the populace primarily reposes, ordered the United States Coast Guard (USCG), *et al*, to promulgate plainly unconstitutional regulations requiring searches of towboat drivers, *et al*, by their employers. Justifying this abandonment of the principles embodied in the Bill of Rights with the assertion that the safety of the populace depended on the sound judgement of others, Congress adopted by reference the proposed regulations, which required, *inter alia*, random testing for traces of metabolic products of drugs. These regulations outlined strict requirements for both the employers and the persons subject to the testing, with mandatory penalties for non-compliance for each. The petitioner/appellant/plaintiff/respondent (me) was informed by respondent/defendant Allegheny Power System (APS) of a federal requirement to submit to testing in February of 1990. I later found out that the test was not required, and

informed management that in the future I would not cooperate with their program in order to expose them.

Despite the long odds, I was not informed that I had been selected at random for testing until January of 1996. In the meantime I watched APS use the program to harass minorities, age-protected workers, union supporters, and what they call disgruntled employees. All this under a federal program that required scientifically random selection, and all without any appearance of randomness.

After having a confrontation with management on Jan. 2, 1996, I was informed on Jan. 22 that I had been chosen at random to submit to urinalysis as required by federal law. I refused and was summarily terminated from employment.

I reported the incident to the USCG, accepted service of administrative charges against my license, and described the apparent abuse of the law that I had observed by APS. I was informed of a technical problem with the charges, and given corrected charges that were not filed. The original charges were dismissed without prejudice against renewal July 29, 1996.

Despite repeated attempts to obtain the information, the USCG has steadfastly refused to provide a reason for the dismissal.

I. Whether dismissal of an administrative charge without hearing means that the charge was not proven, or whether the assumption of guilt associated with the refusal to prove myself innocent survives and the law is plainly unconstitutional?

II. Whether an assertion by an employer of a federal requirement that is not sustained by the administrative agency mandated to enforce it that is used to economically damage a person is *prima facie* tortious fraud?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents iv

Table of Authorities vi

Opinions Below 1

Statement of Jurisdiction of this Court 1

Relevant Constitutional Provisions, Statute, & Regulation. 2,3

Statement of the Case 5

Reasons for Granting the Writ 7

Conclusion 10

Appendix

Opinion of the United States Court of Appeals

for the Fourth Circuit 1a

Order on Petition for Rehearing En Banc 31a

Order Following Pretrial Conference 4a

Plaintiff-Appellant's informal appeal brief 10a

Judge Keeley's letter to the Court of Appeals 29a

Petitioner/appellant/plaintiff/respondent's Affidavit 32a

Table of Authorities

CASES: Page

Brammer v. West Virginia Human Rights Commission

183 W.Va. 108,394 S.E.2d 340 (1990) 9

Brown v. Bullock 194 F.Supp. 207 (SD NY 1961) 8

International Brotherhood of Teamsters v. Department

of Transportation 932 F.2d 1292 (9th Cir. 1991) 10

Ormet v. Ohio Power Company 98 F.3d 799

(4th Cir. 1996) 8

Texas and Pacific Railway Co. v. Rigsby

241 U.S. 33, S.Ct. 482, 60 L.Ed.874 (1916) 8

STATUTE:

28 USC § 1254 (1) 1

REGULATION:

46 CFR Ch. 1 § 15.201(a)(b)(c) 3

Opinions Below

The decision of the U.S. District Court for the Northern District of West Virginia, Clarksburg Division is set forth in the Appendix, P.4a. The unpublished opinion of the Forth Circuit Court of Appeals is set in the Appendix, P.1a, and is reported at 1999 WL 7602490 (4th Cir.(W.Va.)).

Statement of the Basis of Jurisdiction of the Supreme Court

The statutory provision for this Court's jurisdiction is 28 USC § 1254 (1). The District Court entered its Decision in this case on Feb. 23, 1999. A timely appeal and petition for rehearing en banc on the new issue of the Judge's conflict were made. The U.S. Court of Appeals for the Fourth Circuit Ordered the petition denied on November 29, 1999.

Constitutional and Statutory Provisions Involved in This Case

Fourth Amendment of the United States Constitution:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment of the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

46 CFR Ch. 1 § 15.201(a)(b)(c):

(a) Chemical testing of personnel must be conducted as required by this subpart.

(b) If an individual fails a chemical test for dangerous drugs under this part, the individual will be presumed to be a user of dangerous drugs.

(c) If an individual holding a license, certificate of registry, or a merchant mariner's document fails a chemical test for dangerous drugs, the individual shall be denied employment as a crewmember or removed from duties which directly affect the safe operation of the vessel as soon as practicable and shall be subject to suspension and revocation proceedings against his of her license, certificate of registry, or merchant mariner's document under 46 CFR part 5.

Statement of the Case

On Jan. 20, 1998, I filed a complaint in the U.S. District Court for the Northern District of West Virginia avering, *inter alia*, that APS conspired with Spectrum

Medical Services, Inc. (SMS) to avoid the requirement for randomness in selection, and that the USCG joined the conspiracy by ignoring my accusations about the other defendants. The complaint asked for monetary and equitable damages from the corporate defendants, and that the USCG remove from their files any references to the incident.

On April 3, 1998, the USCG, without answering the complaint, moved to dismiss, asserting that the action sounded in tort, and that I had not met the requirements of the Federal Tort Claims Act. Despite the equitable remedy requested, the Court agreed, informing me that you just don't go around suing the government, and Ordered the USCG dismissed from the case.

APS and SMS adopted an affirmative defense, claiming that their actions were in accordance with all applicable federal and state regulations. APS claimed not to have telephone records, and proceeded to produce only bits and pieces of them through the discovery period. SMS claimed that their telephone records were proprietary

business information, and ultimately obtained a protective Order that prevented me from getting the records.

On January 22, 1999, the USCG's action became final because the limit had run for the filing of the phony charges I was given.

APS and SMS moved for Summary Judgement which motions came for hearing on Feb. 16, 1999. The defendants produced no evidence of the legality of their actions, other than the testimony of council for SMS, who asserted that the commandant of the USCG had the power to waive the program requirements, and had apparently done so for both defendants. The Court refused to hear argument from me on the subject, telling me that she had dismissed the USCG from the case a long time ago. The Court dismissed the case against SMS with prejudice, and against APS without prejudice. The Court then advised me of my appeal rights, telling me I had 10 (ten) days to file the notice.

I filed a timely notice of appeal (within 30 days) and the Appeals Court Ordered the submission of informal briefs. I mailed my informal brief (appendix p. 10a) to the Clerk of the Appeals Court April 19,1999.

On May 12,1999, District Judge Keeley, in a letter to the Clerk (appendix p. 29a), admitting to having a conflict of interest, and asked that my appeal be dismissed and the case remanded to the District Court for assignment to another Judge.

On July 15, 1999 (appendix p. 1a) the case was submitted to the Appeals Court, which decided the case September 24, 1999. The opinion states that the panel (acting per curiam) found no reversible error, on the reasoning expressed by the District Court. The opinion also states that "Judge Keeley has aknowledged that she was unaware of her husband's financial interest at the time she disposed of the case." This acknowledgement was *ex parte*, or perhaps the panel was flattering by imitation Judge Keeley's ability to

find without evidence facts favorable to federal officials and corporations.

Reasons for Granting the Writ

The circumstances of this case highlight the flawed reasoning behind the federal law involved. The granting of extraordinary powers to private individuals without ensuring any oversight to protect the rights of citizens is precisely what the founders of our country sought to preclude with the bill of rights. The regulations adopted in theory provide for due process but in practice they allow manipulation by the agency for the benefit of the regulated companies unless the federal courts intervene. I agree with the Chief Justice of this Court that the proliferation of federal legislation places an undue burden on the federal courts. I disagree that the proper method for rectifying the situation is through the media. Simply denying justice to common citizens harmed by federal laws will certainly reduce the caseload in the federal courts on the short term, but it does not address the flawed

legislation. The power to strike down unconstitutional laws and eliminate the resulting litigation lies with this Court.

This Court has held that an implied right of action exists when federal law is designed to protect and doesn't (*Texas & Pacific Railway v. Rigsby* 241 U.S. 33 (1915). The U.S. District Court for the S.D. New York embraced that concept (*Brown v. Bullock* 194 F.Supp. 207 (1961)), as did the 4th Circuit, at least for corporate parties, in *Ormet v. Ohio Power Co.* (98 F.3d 799 (1996)). In the case at bar the mandatory license revocation proceedings (required under 46 CFR Ch. 1 § 15.201(c) triggered by my refusal to submit were intended to protect me from my unscrupulous employer by providing the due process guaranteed by the bill of rights. The USCG tricked me out of that hearing to protect my employer from the administrative and criminal charges that would have inevitably resulted from an examination of the facts. The averments of the complaint (which must be assumed to be true on a 12(b)(6) motion to dismiss) plainly

describe a situation were something is terribly wrong, and a federal law is at the root of it.

Even with the dismissal of the USCG as a defendant, the District Court should not have taken as true testimony from the counsel for (SMS) as to the legality of their actions. West Virginia law requires (*Brammer v. Human Rights Com'n*, 183 W.Va. 108, 394 S.E.2d 340 (1990)) that "[i]n the absence of evidence to the contrary public officers will be presumed to have properly performed their duties...". Having chosen not to take evidence from the USCG (by dismissing them as a party) the District Court was required to assume that the USCG had acted properly by leaving me in possession of my Merchant Mariners license, and that the test in question was not in fact legally required. By representing to me that the test was legally required, and using my refusal as a pretext for firing me, APS and SMS perpetrated a fraud and tort liability is a natural consequence of that fraud.

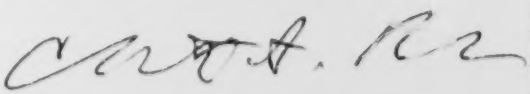
Conclusion

History shows us that when humans are entrusted with a godlike function, some will not be worthy of the task. Whether you are talking about the Pennsylvania daily lottery or the Vietnam conflict selective service lottery, when humans can manipulate a selection process to their own benefit, someone will.

In rejecting a preemptory challenge to companion laws for other transportation workers (*Interational Brotherhood of Teamsters v. Dept. of Transportation* 932 F.2d 1292 (9th Cir. 1991)), the 9th Circuit held that "There will be time enough, if and when the case presents itself, to determine the constitutionality of these regulations in light of a particular employer's abuses". If this Court does not grant Cert. in the case at bar, it is difficult to understand how these regulations could ever be challenged. When I reported my refusal to the USCG they were gung-ho. They were comin' after my license. When I outlined my employer's abuse of the regulations, they ran like roaches when the light comes on. It

must have been refreshing to the US attorney to be defending criminals for once, hiding the evidence with a slick dismissal. Then the District Court treats me like a criminal, simply disregarding my sworn testimony and accepting as fact the word of self-interested defense lawyers. Add a rubber stamp from the Appeals Court and you've got a system that can't be challenged. I don't know why the District Court chose to favor the defendants, but when She admitted to a conflict and was magically exonerated by the Appeals Court, I see the kind of assumption of innocence that the constitution guarantees for everyone, and that I have been denied.

The Court should grant certiorari to review this important matter, vacate the Orders dismissing the several defendants, and remand the case to the District Court for proceedings consistent with the law of the land.

Respectfully Submitted 

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UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CHRISTOPHER A. RENAHAN,
Plaintiff-Appellant,
V.
ALLEGHENY POWER SYSTEM, d[b/a Monongahela Power Company; SPECTRUM MEDICAL SERVICES, INCORPORATED; UNITED STATES COAST GUARD,
Defendants-Appellees.

No. 99-1397

Appeal from the United States District Court
for the Northern District of West Virginia, at Clarksburg.
Irene M. Keeley, District Judge.
(CA-98-10-1)

Submitted: July 15, 1999

Decided: September 24, 1999

Before NIEMEYER, HAMILTON, and LUTTIG, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Christopher A. Renahan, Appellant Pro Se. Edward Gerwig Kennedy, MONONGAHELA POWER COMPANY, Fairmont, West Virginia; Michael Eugene Hoover, DIEFENDERFER, HOOVER, BOYLE & WOOD, Pittsburgh, Pennsylvania; Daniel

W. Dickinson, Jr., OFFICE OF THE UNITED STATES ATTORNEY, Wheeling, West Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Christopher A. Renahan appeals the district court's orders dismissing the United States Coast Guard as a party and granting summary judgment in favor of the remaining Defendants. We have reviewed the record and the district court's opinion and find no reversible error. We have also considered the district court's request that the matter be remanded because of a recent discovery by the district judge that her spouse owns stock in one of the private Defendants. The United States Code provides that a judge must disqualify herself if she "knows that ... [her] spouse ... has a financial interest in the subject matter in controversy or in a party to the proceeding." 28 U.S.C. § 455(b)(4) (1994). Judge Keeley has acknowledged that she was unaware of her husband's financial interest at the time she disposed of the case. Accordingly, despite the district court's commendable concern, we have no difficulty concluding that the lower court's conduct cannot reasonably call her impartiality into question. *See in re Cement & Concrete Antitrust Litigation*, 5 1 5 F. Supp. 1076, 1081-82 (D. Az. 1981) (finding no impropriety regarding orders signed prior to court's knowledge of financial interest in party). We therefore affirm the order of the district court on the reasoning expressed below. *See Renahan v. Allegheny Power Sys.*, No. CA-98-10-1 (N.D.W. Va. Feb. 23, 1999).*

*Footnote trails document

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

*Although the district court's judgment or order is marked as "filed" on February 22, 1999, the district court's records show that it was entered on the docket sheet on February 23, 1999. Pursuant to Rules 5,8 and 79(a) of the Federal Rules of Civil Procedure, it is the date that the judgment or order was entered on the docket sheet that we take as the effective date of the district court's decision. *See Wilson v. Murray*, *806* F.2d 1232, 1234-35 (4th Cir. 1986).

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

CHRISTOPHER A. RENAHAN,

Plaintiff,

V.

CIVIL ACTION NO. 1:98CV10 (Judge Keeley)

ALLEGHENY POWER SYSTEM d/b/a MONONGAHELA POWER COMPANY and SPECTRUM MEDICAL SERVICES, INC.,

Defendants.

ORDER FOLLOWING FINAL PRETRIAL CONFERENCE

On February 16, 1999, the Court conducted the final pretrial conference for the captioned case, at which time it took up the Order to Show Cause issued to the plaintiff, as well as various pending motions. After fully considering the oral arguments of the *pro se* plaintiff and counsel for the defendants, and the briefs submitted by the parties, the Court ruled as follows:

1. The plaintiff, Christopher Renahan, did not show good cause for his failure to appear for the hearing concerning his motion for the appointment of a special expert to conduct handwriting analysis;

2. The plaintiff failed to bring on any evidence sufficient to meet his burden of proof on the claim of conspiracy against Spectrum and Allegheny Power System [now "Allegheny Energy"] . Not only is there no genuine issue of material fact which would preclude the award of summary judgment to the defendants on this cause of action, but also there is no evidence from the plaintiff sufficient to permit his case against Spectrum to proceed. In fact, the Court finds it would be a manifest miscarriage of justice to permit the claim based upon this conspiracy theory to go forward, in light of the following uncontested material facts:

a. The defendant, Spectrum Medical Services, Inc., ["Spectrum"] had a contract with Allegheny Power System [now Allegheny Energy] to provide complete administration of random drug testing conducted in 1996 and 1997 for Allegheny Energy's subsidiary operating companies, including Monongahela Power Company, as required by the United States Coast Guard and federal regulations, including 46 C.F.R. ,§16.230(d);

b. Pursuant to this contract, Allegheny Energy submitted to Spectrum a list of all subsidiary company employees that Allegheny Energy and its subsidiary companies had determined to be subject

to drug and alcohol testing, as outlined in Allegheny's Drug & Alcohol Abuse Policy and 46 C.F.R. §16.230(a) ["the Company Roster"];

C. Plaintiff's name was on the Company Roster submitted by Allegheny to Spectrum for the first quarter of 1996;

d. In compliance with the provisions of 46 C.F.R. §16.230(c), and by utilizing a computer-based random number generator, Spectrum randomly selected the plaintiff for testing during the first quarter of 1996;

e. On Monday, January 22, 1996, the date scheduled for specimen collection at the Fort Martin Power Station location of Monongahela Power Company, plaintiff Renahan refused to cooperate with the specimen collection process;

f. Pursuant to the provisions of 49 C.F.R. §40.25(i), Spectrum's employee, Nancy Zito, informed Allegheny's on-site supervisor of plaintiff Renahan's refusal to cooperate and documented his non-cooperation as required by 49 *C. F.* R. §40.25 (i) . Ms. Zito then left the Fort Martin location, with the approval, and at the direction, of Allegheny's drug and alcohol representative;

g. Spectrum fulfilled its contractual obligations to Allegheny Energy with no evidence of the conspiracy alleged by the plaintiff.

3. Plaintiff Renahan was an employee of Monongahela Power Company.

4. Plaintiff Renahan was not an employee either of Allegheny Power System, Allegheny Energy, West Penn Power Company, Potomac Edison Power Company, or Allegheny Power Service Corporation.

5. No basis exists in fact or law for piercing the corporate veil to permit the plaintiff to proceed on his wrongful discharge claim against Allegheny Energy as the parent company of Monongahela Power Company.

6. The Court lacks subject matter jurisdiction over the plaintiff Is remaining claim against Allegheny Energy for wrongful discharge, which claim does not raise a federal question. Although the plaintiff had proceeded on the basis of diversity jurisdiction, the Court finds that he actually did not sue his employer, Monongahela Power Company, but instead sued Monongahela Power Company's parent corporation. However, even if he had sued the proper party, the Court would be precluded from

considering that claim due to a lack of diverse citizenship between Renahan and Monongahela Power Company.

Accordingly, it is **ORDERED** that:

1. Plaintiff, Christopher Renahan, shall pay a Fifty Dollar ($50.00) sanction for his failure to appear for a hearing concerning a motion he filed and for which he received notice. this sanction shall be paid to the Clerk of the Court by cash or money order or cashier's check made payable to U.S. District Court Clerk, no later than February 19, 1999.

2. The Court **GRANTS** defendant Spectrum's motion for summary judgment, and the plaintiff's conspiracy claim against Spectrum and Allegheny Energy is **DISMISSED WITH PREJUDICE.**

3. The Court **GRANTS** defendant Allegheny Energy's motion for summary judgment on the basis of a lack of subject matter jurisdiction, due to the plaintiff's failure to sue his employer, Monongahela Power Company. In this regard, the plaintiff Is claim for wrongful discharge is **DISMISSED WITHOUT PREJUDICE,** and he may refile it in State Court.

It is so **ORDERED.**

Following these rulings, the Court advised the plaintiff of his appellate rights. Nevertheless, the Court again reiterates that,

should the plaintiff desire to appeal the Court's final rulings in this case, he must do so within 30 days after the entry of this order, in accordance with Rules 3 and 4 of the Rules of Appellate Procedure. A copy of Appellate Rules 3 and 4 are attached to this Order.

The Clerk is directed to transmit copies of this Order to the *pro se* plaintiff, via certified mail, return receipt requested, and to counsel of record.

ENTERED: February 22, 1999

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

for the

Fourth Circuit

99-1397 Renahan v. Allegheny Power Sys

CA-98-10-1

APPELLANTS INFORMAL BRIEF

1. Jurisdiction

A. Appeal from United States District Court for the Northern District of West Virginia, Clarksburg Division.

B. Appeal from orders dated 24 June 1998 and 22 February 1999.

2. Timeliness of appeal N/A

3. Issues on Appeal

Issue 1.

The Court erred in dismissing

the United States Coast Guard (hereinafter USCG) as a party.

Supporting Facts and Argument

The court justified dismissal of the USCG as a party by determining that the cause of action was a tort, and that the plaintiff had not properly pursued a tort claim with the USCG. The complaint however requests an equitable remedy from the USCG, and states that USCG's participation is necessary for just adjudication. The law the corporate defendant's assert that the plaintiff ran afoul of is a federal law and the USCG is the agency charged with enforcing it. The truth of that assertion is the central issue in this case. The actions of USCG personnel have left the plaintiff in a legal limbo, with no positive determination of the legality of the corporate defendant's actions, and no negative

decision to appeal. The plaintiff was left in possession of his USCG issued towboat operators license but by law is unable to seek employment without "proof of cure". The requirement that the USCG seek license revocation in cases such as mine is an attempt to provide retroactive due process to DOT employees who are assumed to be guilty by their refusal to prove themselves innocent. Due process in this case would involve a determination of whether the test in question was in fact legally required. The complaint clearly states that the USCG avoided making that determination for the benefit of the corporate defendants.

Defendant Allegheny Power d/b/a Monongahela Power (hereinafter APS) used this federal law as a pretext to discharge plaintiff from employment. Whether or not the test was legally

required is a federal question that was the responsibility of the USCG to decide. Having avoided that responsibility, the question should properly be decided by Federal District court.

Issue 2.

The court improperly placed the burden of disproving Spectrum Medical Services, Inc.'s (hereinafter SMS) affirmative defense on the plaintiff.

Supporting Facts and Argument

SMS asserts in their motion for summary judgement that their actions were legal and proper. If that were true then the plaintiff claims would barred by estoppel. The evidence however indicates that the actions of SMS were criminal, and that the plaintiff's cause of action against them is a valid one.

Random selection is an either-or thing. Either you are selecting donors at random or you aren't. Plaintiff's trial exhibit #1 is a list from SMS of APS employees randomly selected per DOT regulations for urinalysis during the 4th quarter of 1995. Plaintiff's name is on that list. Plaintiff was not asked to provide a urine sample during that period. SMS's argument that this particular method of manipulating the selection process is not specifically outlawed is absurd. Either you are selecting your donors at random or you are not, and SMS is not. It is a manifest injustice for the court to decide that SMS's actions were legal when the evidence shows they were not.

The courts decision was based on what were considered to be inadequate responses by the plaintiff to SMS's interrogatories. If

the defendant understands what they are being accused of and by whom from the complaint and sets up an affirmative defense based on a misrepresentation of the law then that defense does not become irrelevant because it was not created in response to answers to interrogatories.

Conspiracies are fundamentally difficult to prove. It is not surprising that none of the actors involved confessed to what they did. Plaintiff's answers to SMS's interrogatories reflect the fact that after discovery it was still my word against theirs. As operators of a federally mandated program to create and execute search warrants at random SMS is not entitled to the benefit of the doubt. If SMS cannot prove that they were acting legally they lose. The court gave no reason for choosing to believe SMS's outrageous representations

of the legal requirements they operate under.

Issue 3.

The Court should not have chosen to disregard the plaintiff's affidavit appended to the plaintiff's answer to the defendant's motion for summary judgement as a reiteration of previous contentions, and without probative value.

Supporting Facts and Argument

The averments in the plaintiff's affidavit are facts that the plaintiff has sworn to. Unless disproved they should stand as the truth. Those facts as cited in the plaintiff's answer to the defendant's motion for summary judgement create genuine and material questions as to the legality of the defendant's actions.

The facts used to decide summary judgement are to viewed in the light most favorable to the non-movant. The court's final order recites as "uncontested facts" a series of statements that are either simply not true or are outright adoptions of the defendants positions that are directly contradicted by the plaintiff's sworn testimony.

Fact (a) states that the corporate defendants had a contract as required by federal regulations. Federal regulations do not require any such contract. The purpose of the contract was to protect APS from the USCG. APS was running a dirty program and needed someone to fix things with the USCG. That someone was Eugene Miklaucic, President of SMS and the retired commander of the USCG PITT MSO, the office that was supposed to ensure the

corporate defendant's compliance with federal regulations. The plaintiff's answer to the defendant's motion for summary judgement ¶ 5 describes that contract as a criminal conspiracy to defraud the U.S. Government and cites facts in support of that allegation. The understatement of eligible employees and the overstatement of the number of tests done on reports submitted to the USCG are criminal acts. Mr. Hoover's assertion that these acts must have been OK because the USCG didn't complain is an insult to the plaintiff, as is the court's decision to adopt those arguments.

Fact (b) is directly contradicted by the plaintiff's answer to the defendant's motion for summary judgment. APS deliberately left management personnel off the list of eligible crewmembers while at the same time swearing to the USCG that those personnel worked

on the river in order to renew their licenses. Fact (c) refers to a document that was created after-the-fact by APS. If the date on it is accurate (5-20-96) then it would be the eligibility list for the third quarter of 1996. The power company offered no explanation as to why plaintiff's name would appear on an eligibility list created almost 4 months after plaintiff was fired, and the court offered no explanation how the defendants position on such a plainly bogus document came to be an uncontested fact.

Fact (d) is another unjustified outright adoption of the defendant's position. As discussed in issue 2 above, the evidence shows that SMS was not selecting test subjects at random.

Fact (f) is another unjustified outright adoption of the defendant's position that is contrary to the evidence. Plaintiff testified that he, not Nancy Zito, informed supervision of his refusal. Nancy Zito did not testify that she informed management. That "fact" came from Michael Hoover, whose word the Court is apparently willing to accept without question, or at least without answer. It was also Michael Hoover who swore in his motion for summary judgement that Nancy Zito documented plaintiff's non-cooperation as required by 49 CFR § 40.25(i). He did not however, attach that document as an exhibit, as required by local rule. Plaintiff has not seen that document and has no idea how the Court came to conclude that it had been filled out properly.

Fact (g) is contradicted by the plaintiff's answer to the defendant's motion for summary judgement. SMS had no intention of reviewing the lists for sufficiency as provided in their proposal to APS. Ignoring that contractual obligation led SMS to file a Management Information System report with the USCG that understates the number of eligible employees. That meant that another contractual obligation, the obligation to run the program legally and properly, was also not fulfilled. SMS did not fulfill its contractual obligations to APS, and that by itself is evidence of the conspiracy alleged by the plaintiff.

Fact (3) is contradicted by the plaintiff's answer to the defendant's motion for summary judgement. The evidence there shows that APS controlled the plaintiff's work, provided his

employment benefits, and that Monongahela Power Co. as the local operating company simply administered plaintiff's pay.

Fact (4) demonstrates the value of playing a corporate name game. Defendant APS has averred that they do not do business in West Virginia but plaintiff has seen officers of that company at Fort Martin Power Station, which is in WV, and they were in charge. Defendants averred that Monongahela Power doesn't do business in Pennsylvania, but in the course of his employment (supposedly by Monongahela Power Co.) plaintiff had also worked at Hatfield's Ferry Power Station (located in PA, operated by West Penn Power Company), and was sent to Allegheny Power Service Corporation's offices (also in PA) for a grievance hearing. Plaintiff's employee

identification card shows him to be an employee of Allegheny Power Service Corporation and his firing was authorized by an employee of Allegheny Power Service Corporation, Harold McKinney. (defendants exhibit 18 APS) By not maintaining separation between subsidiary companies, exercising close control over those companies, and representing to employees that they worked for the system, APS has blurred the line between companies and should be held liable as an employer.

Fact (5) is contradicted by the same facts as fact (4) above. The lack of separation between the companies, the co-mingling of employees, directors, and assets, and the business presence in states where these corporations claim not to do business all indicate that the corporate veil is a sham designed to minimize liability while

maximizing economies of scale, and should be pierced. The plaintiff did not work for a pocket, he worked for the pants.

Deciding who is telling the truth is an issue for trial, not summary judgement. Without evidence that the plaintiff's testimony is somehow unreliable it should not be disregarded.

Issue 4

The Court erred in not extending discovery, not appointing an expert witness, and not compelling disclosure.

Supporting Facts and Argument

The court chose to put this case on a rocket docket. There were less than nine months between the filing of the scheduling order and the trial date. Foot dragging, bits and pieces information.

"mistakes" and "scheduling conflicts" lead to a situation were much information that would prove the defendants innocent was not provided to the plaintiff. The Court's offer to sanction the plaintiff on application for further discovery before the close put a chilling effect on the plaintiff's efforts to obtain that information. It was the plaintiff's impression that the Court's decision not to extend discovery was based on an understanding that a conspiracy could be inferred by the corporate defendants professed inability to provide records kept in the normal course of business. That impression was apparently incorrect, as at final hearing the Court was unable to understand that theory.

The controversy surrounding the legality of the test in question might have been resolved by the appointment of an expert witness to examine the documents produced by the defendants. The plaintiff's motion for the appointment of an expert witness shows the defendant had agreed to the plaintiff's request for a document and that they avoided producing it. Mr. Hoover's argument that the plaintiff was trying to do an end run around the scheduling order is disingenuous. It was Mr. Hoover who maintained to the plaintiff that the document did not exist while the period for joining experts expired and Mr. Hoover who promised the Court he would straighten things out within a specific time frame and then didn't. The circumstances surrounding the production of the document and the discrepancies in its appearance are sufficient to raise a question

as to its authenticity, and the Court should have accepted the plaintiff's offer to pay an expert to examine it and report to the Court and the parties.

The refusal to produce telephone records by SMS should not have been condoned by the Court. The Court's assertion that plaintiff was a "starving man who didn't like the menu" is certainly true, but the Court's assertion that this is how things are done in litigation isn't. Normally parties simply pledge confidentiality and are provided with the information that they request. As above, the records the plaintiff requested would exonerate the defendants if they show what the defendants claim. The normal procedure should have been followed. The defendants should have been required to

accept the plaintiff's pledge of confidentiality and produce the records.

4. Relief Requested

Plaintiff asks that the Court of Appeals vacate the Orders described in 1. B. above and remand the case to the District Court for discovery, joining of experts, and trial and that this action be joined with civil action No.1:99cv77, an action in vindication of civil rights related in cause that was filed in the District Court on April 19, 1999.

5. Prior Appeals

A. Have you filed other appeals in this court? _x_No

Christopher A. Renahan

Dated 19 April 1999

May 12, 1999
Ms. Patricia S. Connor
Clerk of Court
United States Court of Appeals
for the Fourth Circuit
1100 East Main Street, Suite 801
Richmond, VA 23219-3517

Re: Renahan v. Allegheny Power System,-et al.

Appeal No. 99-1397

Civil Action No. 1:98CV10

Dear Ms. Connor:

Pursuant to Canon 3F(3) of the Code of Conduct for Judicial Employees, I am writing to advise you that I learned today of a conflict of interest, which should have precluded my handling of the above-captioned civil action. While reviewing the annual Financial Disclosure Form prepared by my accountant, I discovered that my husband owns stock and, thus, has a financial interest in Allegheny Power System, which is one of the defendant-appellees in case number 99-1397. Due to this conflict of interest, I should not have presided over the Renahan case, in which I granted summary judgment to each of the defendants.

Accordingly, I respectfully request that the Judges of the Fourth Circuit Court of Appeals dismiss Mr. Renahan's appeal and remand the case for transfer to another Judge within the Northern District of West Virginia. I sincerely regret the unfortunate oversight which lead to this error.

By copy of this correspondence to Mr. Renahan and to counsel of record, I am advising them all of my discovery of this conflict of interest and of my intention to transfer the case upon remand. I also will enter an Order transferring a new case recently filed by Mr. Renahan and styled Renahan v. Allegheny- Energy, et al., 1:99CV77.

Sincerely,

IRENE M. KEELEY

UNITED STATES DISTRICT JUDGE

IMK/sam
cc: Samuel W. Phillips, Circuit Executive
Christopher Renahan
Edward G. Kennedy
Michael E. Hoover
David G. Godwin, United States Attorney

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
November 29, 1999

No. 99-1397
CA-98-10-1

CHRISTOPHER A. RENAHAN

Plaintiff-Appellant

V.

ALLEGHENY POWER SYSTEM, d/b/a Monongahela Power Company; SPECTRUM MEDICAL SERVICES, INCORPORATED; UNITED STATES COAST GUARD

Defendants – Appellees

On Petition lot Rehearing En Banc

The Appellant's petition for rehearing en banc was submitted to this Court. As no member of this Court requested a poll on the petition for rehearing en banc,

IT IS ORDERED that the petition lot rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
CLERK

IN THE SUPREME COURT OF THE
UNITED STATES OF AMERICA

AFFIDAVIT OF CHRISTOPHER A. RENAHAN

STATE OF WEST VIRGINIA

COUNTY OF MONONGALIA, to wit:

Before me, the undersigned authority, this day personally appeared Christopher A. Renahan, who, being first duly sworn, upon his oath, deposes and says:

1. I am the petitioner in the above-entitled action and have personal knowledge of the facts contained herein.

2. The allegations contained in the above petition are true.

Taken, subscribed and sworn to before me this 21st day of February, 2000.

My commission expires Sept. 19, 2000

OFFICIAL SEAL
Notary Public, State of West Virginia
RICHARD L. GIBSON
P. O. BOX 369
CASSVILLE, WV 26527
My Commission Expires September 19, 2000

Notary Public